

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Illinois Commerce Commission)	
On Its Own Motion)	
)	
-vs-)	
)	
Commonwealth Edison Company)	ICC Docket No. 10-0520
)	
Investigation into compliance with the)	
efficiency standard requirement of)	
Section 8-103 of the Public Utilities Act.)	

**BRIEF ON EXCEPTIONS OF THE
STAFF OF THE ILLINOIS COMMERCE COMMISSION**

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**BRIEF ON EXCEPTIONS OF THE
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NOW COMES the Staff of the Illinois Commerce Commission, by and through its undersigned counsel, pursuant to Section 200.830 of the Illinois Commerce Commission's Rules of Practice (83 Ill. Adm. Code 200.830), and respectfully submits this Brief on Exceptions to the Proposed Order issued by the Administrative Law Judge ("ALJ") on March 29, 2012 ("Proposed Order" or "PO").

I. Introduction

On February 6, 2008, the Illinois Commerce Commission ("ICC" or "Commission") entered an order in Docket No. 07-0540, *Commonwealth Edison Company Petition for Approval of the Energy: 07-0540 Efficiency and Demand-Response Plan* : pursuant to Section 12-103(f)[sic] of the Public Utilities Act, directing Staff to provide the Commission with draft orders to initiate docketed proceedings to review whether Commonwealth

Edison Company (“Company” or “ComEd”) met the energy efficiency goals for year 2 set forth in Section 8-103(i) of the Illinois Public Utilities Act (“PUA” or “Act”). Based on the recommendations of the Staff of the Illinois Commerce Commission (“Staff”) in its Staff Report, the Commission initiated this proceeding on August 30, 2010. Staff commends the ALJ for fairly and objectively addressing the issues in this docket. Staff agrees with most of the Proposed Order’s conclusions and offers only minor clarifications to the Proposed Order’s language in this regard. In general, the Proposed Order accurately reflects the positions taken by Staff and the Company in this proceeding with the exception of the parties’ agreement (or lack thereof) on figures regarding deemed v. actual values for per bulb/fixture lighting. Although Staff supports the Proposed Order’s conclusions regarding whether the Company met its energy efficiency savings goal for Plan Year 2, there are items to which Staff takes exception. The exceptions and proposed language are discussed below, and Staff respectfully requests that they be adopted.

II. Clarifications and Exceptions

A. ComEd’s Portion of the Energy Savings Goal

Staff recommends moving Section IV, entitled “ComEd’s Portion of the Energy Savings Goal” from page 6 of the Proposed Order to Section II, entitled “Energy Savings Results and Penalties Pursuant to 220 ILCS 5/8-103(i)”, and more specifically to page 3 of the Proposed Order.

Section IV, page 6 of the Proposed Order is devoted entirely to ComEd’s portion of the savings goal. The Proposed Order finds that ComEd met its portion of the energy savings goal noting that: “[t]he Commission adopts the conclusion of Staff witness [Jennifer] Hinman that the PY1 and PY2 independent evaluation reports provide adequate

evidence to show that ComEd met its portion of the energy savings goal for Plan Year 2 and, thus, ComEd should not be assessed penalties pursuant to 220 ILCS 5/8-103(i).” PO at 3. In the interest of greater clarity, Staff believes it would be appropriate to include these analyses and findings within the same section.

Staff disagrees with the Proposed Order’s conclusion to decline to reach a decision on the appropriate value that represents ComEd’s portion of the energy savings goal. Section IV of the Proposed Order concludes: “[b]ecause ComEd is not contesting this issue, the Commission will not reach a decision and the value presented in [the Department of Commerce and Economic Opportunity’s] EE Plan is adopted for purposes of this proceeding.” PO at 6. To reduce the need to re-litigate this issue in the Plan Year 3 energy saving Docket No. 11-0592 for differences in values that are *de minimus*, Staff recommends the Commission adopt the lower values as presented in DCEO’s energy efficiency plan for ComEd for Plan Years 1, 2, and 3 as referenced in the final Order in Docket No. 07-0540 and as recommended by Staff in this proceeding. This exception modifies the last paragraph of Section IV of the Proposed Order; however, the recommended language would ultimately appear at page 3 of the PO under the new Section II, A., entitled “ComEd’s Portion of the Energy Savings Goal”.

Staff respectfully requests the following changes to pages 2, 3 and 6 of the PO on this issue:

Proposed Modification

(PO, p. 2)

II. Energy Savings Results and Penalties Pursuant to 220 ILCS 5/8-103(i) (uncontested)

Proposed Modification

(PO, p. 3)

~~The Commission notes that ratepayer funds were spent independently evaluating ComEd's energy efficiency efforts as required pursuant to Section 8-103(f)(7). The Commission agrees with Staff witness Hinman that the work of the independent evaluation team was consistent with methods generally accepted as best practices in the EE evaluation community. The Commission adopts the conclusion of Staff witness Hinman that the PY1 and PY2 independent evaluation reports provide adequate evidence to show that ComEd met its portion of the energy savings goal for Plan Year 2 and, thus, ComEd should not be assessed penalties pursuant to 220 ILCS 5/8-103(i).~~

A. ComEd's Portion of the Energy Savings Goal (uncontested)

Staff notes that in Docket 07-0540, the Commission stated that "DCEO's programs will account for approximately 21% (ranging from 18.6%-21.5%) of the total kilowatt savings during the first three planning years." Order, Docket 07-0540 at 19. According to Staff, the range in percentages is consistent with those contained in DCEO's EE Plan approved by the Commission. Thus, for PY2, Staff asserts that ComEd's portion of the statutory energy savings goal approved by the Commission is 79.3% of the statutory goal.

ComEd, however, proposes to use the portion of the savings goal as presented in its own EE Plan. ComEd witness Brandt testified that for Plan Year 2 ComEd's portion of the energy efficiency saving goal was 312,339 MWh. Staff witness Hinman testified that the ComEd Plan Year 2 goal was 312,038 MWh. ComEd has indicated that it is not challenging the figure used by Ms. Hinman for the Plan Year 2 goal. In rebuttal testimony, ComEd witness Brandt indicates that ComEd is willing to not contest the matter in this case.

Because the final Order in Docket 07-0540 appears to be relatively clear on this matter, the Commission adopts the values presented in DCEO's EE Plan for purposes of the Plan Years 1, 2, and 3. In the future, ComEd and DCEO are advised to carefully coordinate allocation of the statutory goals prior to filing their efficiency plans with the Commission, as the statute requires. 220 ILCS 5/8-103(e) and (f)(4).

The Commission notes that ratepayer funds were spent independently evaluating ComEd's energy efficiency efforts as required pursuant to Section 8-103(f)(7). According to the evaluations, if the "deemed" lighting values are used for "claiming" savings, then the Company achieved 472,132 MWh of energy savings during Plan Year 2, which is over 100,000 MWh in excess of ComEd's "portion" of the savings goal that it needed to achieve to avoid penalties pursuant to 220 ILCS 5/8-103(i). Staff Ex. 1.0 at 15-16. If the

independent evaluator-recommended lighting values are used, which are based on the extensive independent hours-of-use lighting metering study conducted in the ComEd service territory (See Staff Exs. 1.4 and 1.5) instead of “deemed” lighting values, the Company achieved 497,848 MWh of energy savings during Plan Year 2, which is also over 100,000 MWh in excess of ComEd’s “portion” of the savings goal needed to avoid penalties pursuant to 220 ILCS 5/8-103(i). Staff Ex. 1.0 at 16. The Commission agrees with Staff witness Hinman that the work of the independent evaluation team was consistent with methods generally accepted as best practices in the EE evaluation community. The Commission adopts Staff’s conclusion that the PY1 and PY2 independent evaluation reports provide adequate evidence to show that ComEd met its portion of the energy savings goal for Plan Year 2 and, thus, ComEd should not be assessed penalties pursuant to 220 ILCS 5/8-103(i).

Proposed Modification

(PO, p. 6)

III. ComEd’s Portion of the Energy Savings Goal

~~Staff notes that in Docket 07-0540, the Commission stated that “DCEO’s programs will account for approximately 21% (ranging from 18.6%-21.5%) of the total kilowatt savings during the first three planning years.” Order, Docket 07-0540 at 19. According to Staff, the range in percentages is consistent with those contained in DCEO’s EE Plan approved by the Commission. Thus, for PY2, Staff asserts that ComEd’s portion of the statutory energy savings goal approved by the Commission is 79.3% of the statutory goal.~~

~~ComEd, however, proposes to use the portion of the savings goal as presented in its own EE Plan. In rebuttal testimony, ComEd witness Brandt indicates that ComEd is willing to not contest the matter in this case.~~

~~Because ComEd is not contesting this issue, the Commission will not reach a decision and the value presented in DCEO’s EE Plan is adopted for purposes of this proceeding.~~

B. Clarification of Deeming Positions

Staff disagrees with the placement of the “deeming” issue described on page 3 of the Proposed Order. It is Staff’s opinion that this section, as it is currently drafted, does not accurately reflect the record of the parties’ positions. Staff did not argue against using the temporarily “deemed” values for determining whether ComEd met its portion of the savings goal or whether ComEd should be assessed penalties pursuant to Section 8-

103(i) with regard to Plan Year 2. Staff notes that it presented the ComEd-only energy savings results using both the “deemed” values and the evaluator-recommended values to demonstrate to the Commission that, regardless of which set of values are ultimately used, (“deemed” versus evaluator-recommended values), ComEd far exceeded its portion of the savings goal in Plan Year 2 and thus no penalties should be assessed. Staff Ex. 1.0 at 16; Table 6. Understandably, this table may have been the potential source of the confusion.

The contested issue regarding “deemed” values in this proceeding relates to the “banking” of energy savings issue – and accordingly, Staff recommends the discussion regarding “deemed” values be moved to the portion of the Proposed Order where “banking” is discussed. Staff’s position regarding the “deemed” values is inextricably linked to the concept of “banking” energy savings (described in Staff Ex. 1.0 at 12-14), on which the Proposed Order provides a superb analysis. The Proposed Order states:

Banking is not required by (or even mentioned in) the Act. Therefore, a strict interpretation of the Commission’s previous ruling on banking cannot be said to be unfair.

Also, ComEd suggests that Staff’s position would punish ComEd for DCEO’s failure. This is not true, [as] ComEd will only be assessed penalties if it fails to meet its own portion of the statutory goal.

PO at 5.

In order to accurately reflect the record, Staff recommends that the paragraphs associated with “deemed” values on page 3 of the Proposed Order be moved to a new subsection at page 6 of the Proposed Order under Section III, entitled “Methodology and Amount of Banked Energy Savings” to reflect the fact that the contested issue in this docket regarding using the “deemed” values is related to the amount of energy savings that may be “banked” for use in future years, and the contested “deemed” values issue is

not related to the issue of whether ComEd has met its portion of the energy savings goal or whether it should be assessed penalties.

In addition to moving the “deemed” values issue to the appropriate section, Staff offers one other clarification. With regard to the finding on “banking”, Staff does not take exception to the Proposed Order’s conclusions, fully supports the ALJ’s analysis on this issue and believes the Proposed Order’s conclusion on this issue is consistent with the intent of the energy efficiency statute. However, consistent with the Proposed Order’s conclusion regarding the amount of energy savings that ComEd is permitted to bank, “a cumulative total of 42,967 MWh” (PO at 6-8), Staff suggests that the Proposed Order’s conclusion regarding “deemed” values be revised to adopt Staff’s position. This was implicitly adopted by the Order’s finding that 42,967 MWh of energy savings could be banked from Plan Years 1 and 2. Staff’s position regarding “deemed” values and “banking” is set forth below:

“Banked” energy savings are used prospectively to comply with future Plan Years’ energy savings goals. In comparison to using “deemed” values, it is a better policy to have the amount of energy savings “banked” reflect the estimated energy savings based on the potentially more reliable evaluator-recommended values (especially in cases where those values stem from primary data collected in Illinois) that are known at the time at which the Commission approves the amount of energy savings “banked” (*i.e.*, the “banked” energy savings should be based on the best available information known at the time at which the amount of “banked” energy savings is being approved by the Commission).

Staff Ex. 1.0 at 15.

The potential implications of the “deeming” and “banking” issue may be best explained using a hypothetical. For example, it is possible the independent lighting hours-of-use (“HOU”) metering study from the ComEd service territory would determine that the “deemed” HOU value was grossly overstated. This would indicate that the actual savings

resulting in the ComEd service territory from light bulbs were found to be significantly less than what was originally assumed for the purposes of “deeming” – the “deemed” values of which could be considered appropriate by some for the purpose of determining whether ComEd should be assessed penalties and in estimating whether ComEd met its portion of the energy savings goal for the plan year. This would result in unreasonable claims of energy savings achieved in the ComEd service territory. In this hypothetical example, if the Commission permits “deemed” values to be used instead of utilizing the best available information known at the time, then hypothetically the excess amount of “banked” savings could be so large that the energy savings targets in future plan years will be satisfied without any further action – regardless of the fact that the best available information demonstrates that the actual amount of energy savings achieved in the ComEd service territory does not exceed the statutory energy savings targets. Staff believes that permitting “banking” based on “deemed” values that are known to be erroneous, at the time the decision is made by the Commission regarding the amount of “banking” allowed, is contrary to the intent of Section 8-103 of the Act.

The Commission should not ignore substantial evidence that appears significantly at odds with the “deemed” savings values in the assessment of the amount of energy savings that the Company shall be permitted to “bank”. Substantial evidence is in the record in this proceeding that demonstrates that the “deemed” lighting HOU values are not appropriate for the ComEd service territory (See, Staff Exhibits 1.4 and 1.5) and Staff believes that it is not appropriate for the Commission to ignore this evidence in assessing the amount of energy savings that it will permit ComEd to “bank” for use in future years to comply with future annual energy savings targets. While the Plan 1 Docket No. 07-0540

imposed a 10% limitation on the amount of energy savings that ComEd may “bank” in a given plan year for Plan 1, in the Plan 2 Docket No. 10-0570, the Commission significantly reduced the risk to ComEd of not meeting its statutory savings targets by explicitly allowing that, at least, during the Plan 2 cycle, ComEd may “bank” all energy savings achieved in excess of the unmodified statutory energy savings targets. By making a policy decision in this docket regarding “deeming” and “banking” that would effectively permit ComEd to “bank” claimed energy savings based on “deemed” values despite clear evidence those values are grossly inaccurate, the Commission would set a bad precedent for future savings compliance dockets and would impair its ability to ensure the achievement of the statutory energy savings goals¹ as the Commission has been tasked to do pursuant to Section 8-103 of the Act.

In contrast to the hypothetical example provided above, the independent lighting HOU metering study found that the “deemed” lighting value actually understates the HOU value appropriate for the ComEd service territory. This resulted in the finding that higher amounts of energy savings are actually occurring in the ComEd service territory than initially assumed. This finding is shown in Table 1 below by comparing the “TRM-Verified Net Energy Savings Estimates (using “deemed” values)” (182,353 MWh and 506,886 MWh) with the “Evaluation-Verified Net Energy Savings Estimates (using evaluator-recommended values)” (192,327 MWh and 531,886 MWh) – located on the lines right above the “Energy Efficiency Standards”. Staff’s position that 42,967 MWh of energy savings should be approved by the Commission for “banking” purposes is not based off

¹ The energy efficiency programs that are being implemented to achieve these goals are funded by ratepayers (forecast is ~\$1 billion over the Plan 2 cycle for the Illinois utilities subject to 220 ILCS 5/8-103 and 8-104). It is important to ensure the utilities are held accountable to achieving as much energy savings per ratepayer dollar spent on the energy efficiency programs.

the “deemed” values. Thus, if the Commission rejects Staff’s position regarding “deeming” and “banking”, then to be consistent with this finding, the Commission should only permit 32,993 MWh of cumulative “banked” energy savings which is based off the “deemed” values.

Table 1. Evaluation Estimated Energy Savings Results and "Banking" using "deemed" values and evaluator-recommended values

ComEd Service Territory		2008 (PY1)	2009 (PY2)	Source
ComEd Evaluation-Verified Net Energy Savings Estimates (using evaluator-recommended values)	MWh	173,691	497,848	Navigant's DRR-Staff JLH 2.01; Staff Ex. 1.1
ComEd TRM-Verified Net Energy Savings Estimates (using "deemed" values)	MWh	163,717	472,132	Navigant's DRR-Staff JLH 1; Staff Ex. 1.2
DCEO Evaluation-Verified Net Energy Savings Estimates (using evaluator-recommended values)	MWh	18,636	34,038	PY1 EM&V Summary Report at 17; Navigant's DRR-Staff JLH 2.01, 2.02; Staff Ex. 1.1
TRM-Verified Net Energy Savings Estimates (using "deemed" values)	MWh	182,353	506,170	ComEd plus DCEO TRM-Verified Net Energy Savings Estimates ("deemed" values)
Evaluation-Verified Net Energy Savings Estimates (using evaluator-recommended values)	MWh	192,327	531,886	ComEd plus DCEO Evaluation-Verified Net Energy Savings Estimates (evaluator-recommended values)
Energy Efficiency Standards	MWh	188,729	393,691	Docket No. 07-0540, Final Order at 10-11; Docket No. 07-0540, DCEO Ex. 1.1; Docket No. 07-0540, ComEd Ex. 1.0 at 16
Maximum Incremental "Banking" Allowed per Commission Order	%	10%	10%	Docket No. 07-0540, Final Order at 41
Maximum Incremental "Banking" Allowed per Commission Order	MWh	18,873	39,369	Energy Efficiency Standard*10%
Maximum Cumulative "Banked" Energy Savings Allowed per Commission Order	MWh	18,873	58,242	Sum of Potential Incremental "Banking"
Staff Recommends Adopting the Best Estimates of Energy Savings for "Banking" Purposes: Evaluation-Verified Net Energy Savings Estimates (evaluator-recommended values)	MWh	192,327	531,886	PY1 EM&V Summary Report at 17; Navigant's DRR-Staff JLH 2.01-2.03; Staff Ex. 1.1
Evaluation-Verified Net Energy Savings Estimates in Excess of Energy Efficiency Standards	MWh	3,598	138,195	Best Estimated Energy Savings Results for the ComEd Service Territory Less Energy Efficiency Standards pursuant to 220 ILCS 5/8-103(b) for the ComEd Service Territory
Actual Incremental "Banked" Energy Savings using Evaluation-Verified Estimates	MWh	3,598	39,369	Energy Savings in Excess of Energy Efficiency Standards if Less than Max Potential Incremental "Banking" Allowed per Commission Order, otherwise Max Allowed per Commission Order
Staff's Position: Actual Cumulative "Banked" Energy Savings using Evaluation-Verified Estimates	MWh	3,598	42,967	Sum of Actual Incremental "Banked" Energy Savings
Staff Recommends Rejecting this Approach for "Banking" Purposes: TRM-Verified Net Energy Savings Estimates (using "deemed" values)	MWh	182,353	506,170	Estimated Energy Savings Results for the ComEd Service Territory Less Energy Efficiency Standards pursuant to 220 ILCS 5/8-103(b) for the ComEd Service Territory
TRM-Verified Net Energy Savings Estimates ("deemed" values) in Excess of Energy Efficiency Standards	MWh	(6,376)	112,479	PY1 EM&V Summary Report at 17; Navigant's DRR-Staff JLH 2.01-2.03; Staff Ex. 1.1
Incremental "Banked" Energy Savings using TRM-Verified Estimates ("deemed" values)	MWh	(6,376)	39,369	Stipulated Energy Savings (using "deemed" values) in Excess of Energy Efficiency Standards if Less than Max Potential Incremental "Banking" Allowed per Commission Order, otherwise Max Allowed per Commission Order
Staff Recommends Rejecting this Approach: Cumulative "Banked" Energy Savings using TRM-Verified Estimates ("deemed" values)	MWh	(6,376)	32,993	Sum of Incremental "Banked" Energy Savings (using "deemed" values)

Notes: The TRM-verified estimates reflect "deemed" values for average displaced watts (delta watts), hours of use, and peak load coincidence factor, adjusted for the additional impact of program bulbs that were installed in commercial locations. It is Staff's position that the "deemed" values should only be used for assessing whether the Company should be assessed penalties pursuant to 220 ILCS 5/8-103(i). The evaluation-verified savings estimates are derived from independent values for these same parameters, developed by the independent evaluation team using data collected in the ComEd residential lighting hours of use metering study evaluation and from reviews of other studies. It is Staff's position that the independent evaluator's best estimate of energy savings actually achieved in the ComEd service territory should be used when determining the amount of energy savings the Company is permitted to "bank" in a given Plan Year (rather than stipulated outdated values that are not representative of the actual energy savings achieved in the State). Staff believes this approach is consistent with the statute's intent and recommends the Commission explicitly adopt this approach. While Staff believes this approach is consistent with the Commission's "banking" position in the Plan 1 Order since by definition any energy savings "banked" will be used in the future (prospectively), Staff recommends the Commission reaffirm this position in the final order in this proceeding.

The Proposed Order should be changed to clearly adopt Staff's position, as that is what is contemplated by the Proposed Order and supported by the evidence. Staff therefore respectfully requests that the Commission adopt the following clarifications to, and recommendations regarding, the Proposed Order.

Proposed Modification

(PO, p. 3)

~~The goal for Plan Year 2 as a whole (including both the ComEd-administered portion and the portion administered by DCEO) was 393,691 MWh. ComEd witness Brandt testified that for Plan Year 2 ComEd's portion of the energy efficiency saving goal was 312,339 MWh. Staff witness Hinman testified that the ComEd Plan Year 2 goal was 312,038 MWh. ComEd has indicated that it is not challenging the figure used by Ms. Hinman for the Plan Year 2 goal.~~

~~Regardless of which figure is used, all parties agree that ComEd has met the energy efficiency saving goal for Plan Year 2 and that no penalties should be assessed. The difference in numbers is apparently due to ComEd's use of deemed lighting values and Staff's use of actual values for per bulb/fixture lighting savings. Although the parties indicate that a decision on this issue is not necessary for the purposes of this proceeding, the Commission has already addressed this issue in Docket 07-0540, as follows:~~

~~As Staff points out, there seems to be no reason, at this time, to independently determine the energy savings values of certain types of light bulbs based on the values that were determined in California. However, "deeming" values now adds a level of certainty to, and definition in, the operation of a plan. And, light bulbs are not weather-sensitive. Therefore, DCEO's recommendation that these values should be deemed, temporarily, with the final values to be determined before the end of the plan's three-year period and applied prospectively, is a reasonable one. During the next three-year period actual values must be developed for use prospectively, in future years. Also, these values must be revisited every three years, or, more frequently, as, new technology may emerge that would change these values or render the use of certain technology obsolete.~~

~~Order, Docket 07-0540 at 42. Moreover, the language relied on by Staff in support of its position quotes language from the Commission's summary of ComEd's position on this issue in Docket 07-0540 and not the Commission's conclusion. Thus, the Commission finds that the language in Docket 07-0540 supports ComEd's position, but will accept the figure agreed to by the parties.~~

Proposed Modification

(PO, p. 4)

III. Deeming Methodology and Amount of Banked Energy Savings

Proposed Modification

(PO, p. 6)

A. Impact of Relationship between Deemed Values and Banking

The goal for Plan Year 1 and Plan Year 2 as a whole (including both the ComEd-administered portion and the portion administered by DCEO) was 188,729 MWh and 393,691 MWh. Using the ComEd-recommended “deemed” values results in a total amount of “claimed” savings equal to 182,353 MWh and 506,170 MWh for Plan Year 1 and Plan Year 2, respectively. Using the energy savings values supported by Staff results in a total amount of energy savings equal to 192,327 MWh and 531,886 MWh in Plan Year 1 and Plan Year 2, respectively. The difference is apparently due to ComEd’s use of deemed lighting values in contrast to Staff’s use of actual values for per bulb/fixture lighting savings. The Commission addressed this issue of “deemed” values in Docket 07-0540, albeit not in the context of “banking” energy savings, as follows:

As Staff points out, there seems to be no reason, at this time, to independently determine the energy savings values of certain types of light bulbs based on the values that were determined in California. However, “deeming” values now adds a level of certainty to, and definition in, the operation of a plan. And, light bulbs are not weather-sensitive. Therefore, DCEO’s recommendation that these values should be deemed, temporarily, with the final values to be determined before the end of the plan’s three-year period and applied prospectively, is a reasonable one. During the next three-year period actual values must be developed for use prospectively, in future years. Also, these values must be revisited every three years, or, more frequently, as, new technology may emerge that would change these values or render the use of certain technology obsolete.

Order, Docket 07-0540 at 42. Since Staff’s position regarding using the best available information for the calculation of the amount of energy savings that may be “banked” for use in future years does not lower the kWh achieved by ComEd in this docket, ComEd indicated that, for purposes of this docket only, it would not contest the matter. The Commission finds that the language in Docket 07-0540 supports Staff’s position, as the amount of energy savings that is permitted to be “banked” will be applied prospectively in future years. Similar to our findings in the previous section, if ComEd

were able to rely on banked energy saving in order to meet its statutory goal, then the Commission's allowance of banking in any form has saved ComEd. It would be unreasonable for the Commission to permit energy savings to be "banked" based on stipulated values, where actual values are available. Banking is not required by the Act, nor is it referred to or even necessarily contemplated. Therefore, a rigorous interpretation of the Commission's previous ruling on banking is fair and reasonable. The Commission finds that the best available information should be used in estimating the amount of energy savings actually achieved when considering whether to permit the utility to "bank" energy savings for future years.

B. Demand Response

Staff agrees with the PO's finding regarding expanding the scope of the savings compliance dockets. As such, Staff recommends the scope is also expanded to include all issues associated with the evaluations that are filed in this docket. Staff believes this is consistent with an ALJ's ruling to strike language from Staff's testimony in the reconciliation docket related to these issues in Docket No. 10-0537.

Staff respectfully requests that the Commission adopt the following clarifications to, and recommendations regarding, the Proposed Order.

Proposed Modification

(PO, p. 7)

C. Commission Analysis and Conclusion

Based on the evidence of record, it is clear that ComEd has met its statutory demand response savings goal for PY2. It is also clear that subsection (i) does not apply to demand response measures, just the energy efficiency measures. Hence, a finding is not necessary for purposes of determining whether a penalty would apply.

It does not follow, however, that because penalties cannot be assessed, the Commission need not address demand response. Indeed, if not addressed in this docket, it is not clear where the demand response goals would be reviewed. If ComEd fails to meet the demand response goals, the Commission must be informed because the Commission would ultimately be responsible for approving an adjustment of the demand response measures on a going-forward basis. Accordingly, the annual compliance dockets are the appropriate proceedings for the Commission to make findings on the statutory demand

response goals. Furthermore, issues regarding the cost effectiveness of the utilities' portfolio of energy efficiency measures that the independent evaluation reports address pursuant to 220 ILCS 5/8-103(f) (7) shall also be considered within the scope of the annual compliance dockets, in order to assure review of the cost effectiveness of the utilities' portfolio of energy efficiency measures as required by statute.

IV. CONCLUSION

Staff respectfully requests that the Illinois Commerce Commission approve the recommendations described in this brief, which are fully illustrated in Attachment 1 to this filing.

Respectfully submitted,

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